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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,144	04/21/2004	Johnson Jennifer	610.0002	7839
25534 7590 07/24/2008 CAHN & SAMUELS LLP 1100 17th STREET NW SUITE 401 WASHINGTON, DC 20036				
EXAMINER				
NGUYEN, VI X				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
07/24/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/830,144

**Applicant(s)**

JENNIFER ET AL.

**Examiner**

Victor X. Nguyen

**Art Unit**

3734

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2008 and 11 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5, 7-13, 15, 17, 21, 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5, 7-13, 15, 17, 21, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The request filed on 5/5/2008 for Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 10/830,144 is acceptable and a RCE has been established. An action on the RCE follows.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5,7-13,15,17,21 and 23-24 are rejected under 35 U.S.C. 103 (a) as being unpatentable over McMilan (6,899,720) in view of Henley, Jr (4,794,656).

McMilan discloses a tourniquet article including: a strap 12 in communication with a handle where the handle is a rod 20, where the strap engages with a base 42 at a first point upstream from the handle and at a second point downstream from the handle (see fig. 1). McMillan is silent regarding the base is rigid and the handle is a rod including notches disposed at first and second end portions.

Henley, Jr teaches a medical device which includes a rigid support board or base 23 (fig.1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify McMilan by constructing a rigid support board or base as taught by Henley, Jr in order to restrain the person's movement. With this rigid base would prevent any crushing of the base when the handle is twisted. Regarding the handle

is a rod including notches. It would have further been obvious matter of design choice to a person of ordinary skill in the art to have the handle is a rod including notches disposed at first and second end portions, because applicant has not disclosed that the handle is a rod including notches provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected McMillan in view of Henley, and applicant's invention, to perform equally well with either the device taught by McMillan in view of Henley because both device would perform the same function of constricting blood flow to limbs and both device comprises a handle which is a rod.

Therefore, it would have been obvious to modify McMillan in view of Henley to obtain the invention as specified in claim 5 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of McMillan in view of Henley. As to claims 7-8, McMillan discloses the trap has a width between 1 inch and about 2.5 inches (see col. 3, lines 25-36) and the handle includes an aperture at 21 which the strap passes through the aperture. As to claims 15,17 and 21, McMillan discloses the tourniquet further has a buckle 16 being tapered and where the device further has a handle lock which includes a ring either at 24 or 28, where the ring is movably attached to the base (see col. 5, lines 14-35). Regarding claims 9-13, McMillan in view of Henley is silent regarding the base comprises a layered composite including a lower layer comprised of one of a non slip fabric or the upper layer comprises nylon scuba webbing or the intermediate layer comprises a polypropylene webbing. It would have been obvious to one having ordinary skill in the art at the time the

invention was made to construct the base comprises a layered composite including a lower layer comprised of one of a non slip fabric or the upper layer comprises nylon scuba webbing or the intermediate layer comprises a polypropylene webbing, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use or as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Regarding claims 23-24, McMillan in view of Henley discloses a structure member comprises a cap 25 which fixedly attached to the base where the strap being sandwiched between at least portion of the structural member and the base (at best seen fig. 8 of Henley).

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ho Jackie can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/  
Primary Examiner, Art Unit 3734

Victor X Nguyen  
Examiner  
Art Unit 3734

VN  
7/18/2008